



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 21 2014

Ms. Pilar Patterson, Chief
Mail Code 401-02B
Division of Water Quality
Bureau of Surface Water Permitting
P.O. Box 420
Trenton, NJ 08625-0420

Re: EPA's comments on the draft NJPDES permits for:

Passaic Valley Sewerage Commissioners (NJ0021016), Bayonne City (NJ0109240), East Newark Borough (NJ0117846), Harrison Town (NJ0108871), Jersey City (NJ0108723), Newark City (NJ0108758), North Bergen Township (NJ0108898), Paterson City (NJ0108880), Town of Kearny (NJ0111244)

Dear Ms. Patterson:

The EPA recognizes the important milestone the New Jersey Department of Environmental Protection (NJDEP) has reached in the Combined Sewer Overflow (CSO) control program by completing the issuance of CSO draft permits to all owners or operators of combined sewer systems in NJ. The issuance of the draft permits will ultimately result in significantly improved water quality in many of the state's waterways. We also applaud the requirements in these permits for effective asset management and the evaluation of green infrastructure which will significantly advance the use of sustainable approaches to water quality management. As you know, Section 402(q) of the Clean Water Act requires each permit to conform to the *CSO Control Policy* (Federal Register /Vol. 59, No. 75/Tuesday, April 19, 1994). The EPA has reviewed the draft permits in accordance with 40 C.F.R. § 123.44, and provides the attached comments for your consideration as you develop the final permits.

On January 17, 2014, NJDEP provided notice of the draft New Jersey Pollutant Discharge Elimination System (NJPDES) permits for Passaic Valley Sewerage Commissioners (NJ0021016), Bayonne City (NJ0109240), East Newark Borough (NJ0117846), Harrison Town (NJ0108871), Jersey City (NJ0108723), Newark City (NJ0108758), North Bergen Township (NJ0108898), Paterson City (NJ0108880), and the Town of Kearny (NJ0111244). As stated in the public notice, the existing authorizations under the CSO Master General Permit (NJ0105023) for Bayonne City, East Newark Borough, Harrison Town, Jersey City, Newark City, North Bergen Township, Paterson City, and Town of Kearny are proposed to be terminated, and existing and updated CSO requirements will be consolidated in the proposed new permits. The Passaic Valley Sewerage Commissioners' permit will be renewed to incorporate updated CSO permit requirements.

The EPA looks forward to continuing to work with the NJDEP to ensure the final permits meet all of the requirements of the Clean Water Act and the *CSO Control Policy*. Please contact me or Mr. Stan Stephansen of my staff at (212) 637-3776 with any questions, concerns or additional assistance that we can provide.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Kate Anderson", with a stylized flourish at the end.

Kate Anderson, Chief
Clean Water Regulatory Branch

Attachment

EPA Comments on Passaic Valley Sewerage Commissioner, Bayonne City, East Newark Borough, Harrison Town, Jersey City, Newark City, North Bergen Township, Paterson City, and Town of Kearny Draft NJPDES Permits

A. Significant Comments

1. Applicable to all draft permits and fact sheets:

- Evaluation of Alternatives

The EPA acknowledges that permittees have already analyzed and evaluated a number of CSO alternatives during earlier permit terms. We would like to reiterate the importance of ensuring that the long term control plan (LTCP) includes a synthesis of existing information supplemented by new analysis, such that a thorough evaluation of a sufficient range of control alternatives is conducted in accordance with EPA's *CSO Control Policy*. We note that the *CSO Control Policy* contains specific language for evaluating a reasonable range of CSO control alternatives and states the following: "EPA expects the long-term CSO control plan to consider a reasonable range of alternatives. The plan should, for example, evaluate controls that would be necessary to achieve zero overflow events per year, an average of one to three, four to seven, and eight to twelve overflow events per year. Alternatively, the long-term plan could evaluate controls that achieve 100% capture, 90% capture, 85% capture, 80% capture, and 75% capture for treatment. The LTCP should also consider expansion of POTW secondary and primary capacity in the CSO abatement alternative analysis. The analysis of alternatives should be sufficient to make a reasonable assessment of cost and performance." (59 FR 18692)

- Development of a single integrated CSO Long Term Control Plan

EPA supports and encourages the NJDEP to continue working with the permittees to develop a single integrated LTCP for the hydraulically connected sewer system (i.e. a single integrated LTCP for Passaic County Sewerage Commissioners together with all of the contributing CSO communities). EPA believes this is the most effective and cost-efficient way to execute CSO control plan development. The *CSO Control Policy* requires that when different parts of a single combined sewer system are operated by more than one authority, permits issued to each authority should generally require joint preparation and implementation of the Policy. Permittees should be required to coordinate system-wide implementation of the nine minimum controls and the development and implementation of the long-term CSO control plan. Paragraph c. of Section "D. Submittals 1. CSO Submittal Requirements" should be updated to include these requirements and Section "D Submittals 4. CSO Progress Report Submittal Requirements" should include requirements to report on the permittee's joint and separate responsibilities and progress in implementing the NMCs and in developing and implementing the LTCP. In addition, all permits in the combined sewer system should be cross-referenced for informational purposes. Alternatively, rather than issuing separate, cross-referenced individual permits, the NJDEP should consider issuance of a single permit for the entire hydraulically connected system / POTW with each municipality that contributes flows to the hydraulically connected system (including both separate and combined systems) listed as a co-permittee.

"Section F Nine Minimum Control Requirements"

- Maximization of flow to the POTW for treatment

The evaluation and implementation of alternatives for increasing flow to the STP is an important requirement of the CSO Control Policy; this requirement should not be limited specifically to "low cost alternatives".

2. Applicable to the draft permit and fact sheet for the Passaic County Sewerage Commissioners

- Flow Limitations

The fact sheet and several areas of the permit include information and authorizations limiting the amount of flow to the facility and/or specific outfalls. Limiting the amount of flow the facility can accept appears to contradict one of the major requirements of the *CSO Control Policy* – namely, to maximize flow to the POTW for treatment. The purpose of the various flow limits or restrictions – 330 MGD, 550 MGD, or 720 MGD, is not apparent and needs to be clarified or eliminated to ensure that it is consistent with the *CSO Control Policy*.

Section "F. Nine Minimum Control Requirements."

- 5. Prohibition of CSOs during Dry Weather

Replace, "Since the permittee does not own and/or operate any CSO outfalls, this proposed permit action does not include the prohibition of CSOs during dry weather at this time." with, "The permittee shall operate the system in such a way that it does not cause any dry weather overflow from the collection system owned/operated by other permittees in the hydraulically connected system."

- 8. Public Notification to Ensure that the Public Receives Adequate Notification of CSO Occurrences and CSO Impacts

Replace, "Since the permittee does not own and/or operate any CSO outfalls, this proposed permit action does not include the requirement to ensure that the public receives notification of CSO occurrences and impacts at this time." with, "The permittee shall coordinate with other permittees within the hydraulically connected system for the public notification process to ensure that the public receives adequate notification of CSO occurrences and CSO impacts."

- 9. Monitoring to Effectively Characterize CSO Impacts and the Efficacy of CSO Controls

Replace, "Since the permittee does not own and/or operate any CSO outfalls, this proposed permit action does not include the requirement to characterize CSO impacts and controls at this time." with, "The permittee shall coordinate with other permittees within the hydraulically connected system for monitoring to effectively characterize CSO impacts and the efficacy of CSO control."

**EPA Comments on Passaic Valley Sewerage Commissioner, Bayonne City, East Newark
Borough, Harrison Town, Jersey City, Newark City, North Bergen Township, Paterson City, and
Town of Kearny Draft NJPDES Permits**

B. Minor Comments

1. Applicable to fact sheet for the Passaic County Sewerage Commissioners

- CSO-related Bypass

NJDEP should consider adding additional detail from the *CSO Control Policy* to further clarify this section: "For approval of a CSO related bypass, the long-term CSO control plan, at a minimum, should provide justification for a cut-off point at which the flow will be diverted from the secondary treatment portion of the treatment plant, and provide a benefit-cost analysis demonstrating that conveyance of wet weather flow to the POTW for primary treatment is more beneficial than other CSO abatement alternatives such as storage and pump back for secondary treatment, sewer separation, or satellite treatment" (18693 FR /Vol. 59, No. 75).

The fact sheets state that "National policy encourages permittees to consider the use of a bypass of secondary treatment in the evaluation of alternatives." It is more accurate to say "allows" rather than "encourages."

The fact sheets also note that NJ regulations prohibit bypass and states that DEP "recognizes that the rule would need to be modified in order to allow bypasses as part of an approved LTCP." Under 40 CFR 122.41(m)(4), bypass is prohibited, but the rule provides for enforcement discretion where:

- The permittee shows that the bypass was unavoidable to prevent loss of life, personal injury or severe property damages;
- The permittee shows that there was no feasible alternative to the bypass; and
- The permittee submitted the required notice.

The "no feasible alternative" analysis should be included in the LTCP. The *CSO Policy* describes what this analysis should entail in more detail.

The fact sheets state that for DEP "to consider a by-pass as a feasible alternative ...". This is inaccurate. The Fact Sheet should state, "in order for bypassing to be considered it must be demonstrated that there are no feasible alternatives to bypass."

2. Applicable to the draft permit and fact sheet for the Passaic County Sewerage Commissioners

Section "G Long Term Control Plan (LTCP):"

- 1. Characterization, Monitoring and Modeling of the Combined Sewer System

Add, "The permittee shall work in coordination with the CSO community and all other direct/indirect contributors which are hydraulically connected to the STP, for appropriate Characterization, Monitoring and Modeling of the Sewer System."

3. Applicable to all permits and fact sheets

- Definitions

Define “construction-related activities.” Does it include *any* construction, e.g., for repairs, or is this only about construction of new storage capacity or other new construction called for by the LTCP? Also, we did not see a definition for “QL.”

“Section G Long Term Control Plan (LTCP):”

- 3. Consideration of Sensitive Areas

Replace “Sensitive areas include.....” with “Sensitive areas, as determined by the NPDES authority in coordination with State and federal agencies, as appropriate, include”

- 4. Evaluation of Alternatives

Replace “Combined sewer overflows remaining after implementation of the NMCs and within the criteria specified in Section G.4.f.ii and iii, shall” with: “Combined sewer overflows remaining after implementation of the NMCs and within the criteria specified in Section G.4.f.i or ii, shall”

- Reopener Clause

A reopener clause should be added to the permits as required by the *CSO Control Policy*. A reopener clause authorizing the NPDES authority to reopen and modify the permit upon determination that the CSO controls fail to meet WQS or protect designated uses. Upon such determination, the NPDES authority should promptly notify the permittee and proceed to modify or reissue the permit. The permittee should be required to develop, submit and implement, as soon as practicable, a revised CSO control plan which contains additional controls to meet WQS and designated uses. If the initial CSO control plan was approved under the demonstration provision of Section II.C.4.b., the revised plan, at a minimum, should provide for controls that satisfy one of the criteria in Section II.C.4.a. unless the permittee demonstrates that the revised plan is clearly adequate to meet WQS at a lower cost and it is shown that the additional controls resulting from the criteria in Section II.C.4.a will not result in a greater overall improvement in water quality.

- CSO/Ambient Monitoring

The monitoring program should address the specific water quality problems in the receiving waters impacted by the permittee’s CSOs. This may require monitoring for parameters in addition to pathogens. For example, some water bodies may be impacted by nutrients, toxics or other pollutants of concern. This is especially critical for those permittees choosing to follow the “Demonstration Approach” when developing the CSO LTCP.

4. Applicable to all fact sheets

- Post Construction Compliance Monitoring

Consider adding EPA's CSO Post Construction Compliance Monitoring Guidance, which can be found at http://cfpub.epa.gov/npdes/whatsnew.cfm?program_id=5 in areas referring to EPA Guidance

- Combined Sewer Overflow Control Policy Background: A. Regulatory Background

Replace: "The U.S. Environmental Protection Agency (EPA) estimated the CSO abatement costs for the 1,100 national communities served by CSSs to be approximately \$41.2 billion in the May 1995 Combined Sewer Overflows - Guidance for Nine Minimum Controls" with "As per EPA's 2008 Clean Watersheds Needs Survey – Report to Congress, estimated abatement cost for CSOs was \$63.6 billion nationally."

Replace "In the Wet Weather N.J.A.C.7:14A-11.12 – Appendix C." with "In the Wet Weather Quality Act of 2000, Congress amended the CWA to require that all permits, orders and decrees issued to regulate combined sewer system overflows "shall conform" to the National Policy, 33 U.S.C.A. Section 1342 (q)(1). DEP incorporated the National Policy verbatim into its regulations at N.J.A.C.7:14A-11.12 – Appendix C."

Replace "The National Policy requires permittees to implement Nine Minimum Controls (NMCs)" with "The *CSO Control Policy* required permittees to implement the nine minimum controls with appropriate documentation no later than January 1, 1997."

After LTCP elements, add: "Permittees shall develop and submit the long-term CSO control plan as soon as practicable, but generally within two years after the date of the NPDES permit provision, Section 308 information request, or enforcement action requiring the permittee to develop the plan. NPDES authorities may establish a longer timetable for completion of the long-term CSO control plan on a case-by-case to account for site-specific factors which may influence the complexity of the planning process."

5. Applicable to Fact Sheet for Passaic County Sewerage Commissioners

- Section 8 - Variances to Permit Conditions:

The fact sheet should also refer to the federal requirements at 40 CFR 131.10 (g) for variances.

6. Applicable to all Public Notices and Fact Sheets

- The statement "NJDEP has historically been regulating the majority of discharges from CSOs through authorizations under a Master General Permit NJ0105023 and others through individual permits, consistent with the National Policy for CSO Controls" is not accurate. The phrase "consistent with the National Policy for CSO" should be removed.

7. Applicable to all permits and fact sheets except Passaic Valley Sewerage Commissioners

- Nine Minimum Control Requirements. 5.d.

Allows for CSO outfalls to be used for "other types of discharges to address extraordinary circumstances," but only with approval.

- Clarify whether advanced approval is required – (i.e., analogous to anticipated bypass).

- NJDEP should consider expressing this in terms of enforcement discretion rather than reserving “the right to allow” the use of the CSO outfalls for “other types of discharges.”
- We suggest explaining this in the Fact Sheet.